



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/170182

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 16, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Marathon County Department of Social Services in regard to Medical Assistance (MA) benefits, a hearing was held on January 7, 2016, by telephone. A hearing set for December 2 was rescheduled at the petitioner's request.

The issue for determination is whether the Department correctly determined that the petitioner was overpaid MA/BadgerCare Plus (BCP) benefits for the May through September 2013, and June through August 2014, periods.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED] ES Spec.  
Marathon County Department of Social Services  
400 E. Thomas Street  
Wausau, WI 54403

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County.

2. The petitioner's household adults received BCP from at least October 2012 through September 2013, and again from May 2014 through at least August 2014. The household consisted of the petitioner, her husband, and three children. Household income limits are based on household size.
3. *May–August 2013:* On March 1, 2013, the Department mailed a FoodShare/BCP eligibility notice to the petitioner, advising that she should report, within deadlines, gross monthly income exceeding **\$2,297.50**. The household's gross income in March 2013 was \$3,482.46. Their income kept the household above the income reporting limit through August 2013. Thus, she should have reported the higher income by April 10, to affect May benefits. She did not report this. Instead, she reported her income of \$224.67 from [REDACTED], and \$1,140.26 for her husband. If she had reported correct income, the household's adults would have been liable for a BCP monthly premium from May through August 2013. In 2013, premiums were required for adults with household income exceeding 133% of the Federal Poverty Level (FPL), or \$3,055. Those 2013 premium liabilities total \$1,384. The petitioner did not challenge the agency's computation of the premium amounts.
4. *June–August 2014:* Income limits change once per year. On April 15, 2014, the Department mailed an eligibility notice to the petitioner, advising her to report within deadlines if her household income exceeded **\$2,325.83** monthly. The household's gross income in April 2014 was \$3,633.03. This should have been reported by May 10, to affect June benefits. The higher income, which came from the petitioner's [REDACTED], was not reported. The household's actual gross income was \$4,058 for June, \$3,622 for July and \$3,466 for August, which caused the household's adults to be over the BCP gross income limit in those months. As of April 2014, the BCP gross income limit of adults was lowered from 200% FPL to 100% FPL (\$2,325.83) by the Wisconsin Legislature. All BCP benefits paid for the adults from June through August 2014, totaling \$2,831.55, were an overpayment.
5. The agency learned of the petitioner's 2012 - 2014 income when it received an employer wage match report from the Wisconsin Department of Workforce Development in October 2014. In reviewing the petitioner's FoodShare and BCP calculations, the agency discovered that the petitioner had under-reported her earnings in 2012, under-reported her and her husband's earnings in 2013, and failed to report her [REDACTED] in 2014. The 2012 under-reporting caused a FoodShare overpayment, but not a BCP overpayment.
6. On September 24, 2015, a *Wisconsin Medicaid & BadgerCare Plus Overpayment Notice* was sent to the petitioner, advising that she had been overpaid (a) \$1,384 for the 5/1/13 – 9/30/13 period (claim [REDACTED]), and (b) \$2,831.55 in BCP for the 6/1/14 – 8/31/14 period (claim [REDACTED]). The BCP overpayments total \$4,215.55. The overpayments were due to client error.

### **DISCUSSION**

The Department of Health Services (Department) is legally required to seek recovery of incorrect BCP payments when a recipient engages in a misstatement or omission of fact on a BCP application, or fails to report income information, which in turn gives rise to a BCP overpayment:

**49.497 Recovery of incorrect medical assistance payments. (1)** (a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s.49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits *under this subchapter* or s.49.665.
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of

income or assets in an amount that would have affected the recipient's eligibility for benefits.

3. The *failure* of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf *to report any change in the recipient's financial or nonfinancial situation* or eligibility characteristics *that would have affected the recipient's eligibility for benefits* or the recipient's cost-sharing requirements.

(b) The department's right of recovery is against any medical assistance recipient to whom or on whose behalf the incorrect payment was made. The extent of recovery is limited to the amount of the benefits incorrectly granted. ...

(emphasis added)

Wis. Stat. §49.497(1). BCP is in the same subchapter as §49.497. See also, *BCP Eligibility Handbook(BCPEH)*, §28.1, online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>.

Department policy then instructs the agency, in a "no eligibility" case, to base the overpayment determination on the actual MA/BCP charges paid. *BCPEH*, §§28.1- 28.4. For a person who should have paid a BCP premium, the overpaid amount is the unpaid premium.

The BCP statute requires the recipient to report changes that might affect eligibility:

**(6) MISCELLANEOUS ELIGIBILITY AND BENEFIT PROVISIONS. ...**

(h) Within 10 days after the change occurs, a recipient shall report to the department any change that might affect his or her eligibility or any change that might require premium payment by a recipient who was not required to pay premiums before the change.

Wis. Stats. §49.471(6)(h). See in accord, *BCPEH*, §27.2-.3. Thus, the existence of the timely reporting requirement is clear.

In this case, the agency asserts that the petitioner failed to report the commencement of, or increases in, employment and, subsequently, the increase in her household income to above the reporting thresholds for the overpayment months. When household income exceeded 133% FPL, which was the 2013 premium threshold, the adults should have paid a BCP premium. They did not report the increased income, so they were not charged the premium, and the amounts they owe are now recoverable. The law regarding income limits changed (lowered) in 2014. In 2014, when the household income exceeded 100% FPL, the adults were not eligible for any BCP benefits. Wis. Stat. §49.471(4). Based on the proved excess income, the agency came up with the overpayment amount. The agency's proof was its collection of all of the adults' pay records from their employers. *See*, Exhibits 1B, 1C. The petitioner offered no documentation to refute the employers' records. Her vague testimony that she could not have earned as much as alleged, was not credible.

The petitioner also testified that she believed that she and her husband did not use their BCP card for services, so she was unaware that she was on the program. The 2014 BCP overpayment amount consists of a monthly capitation fee paid to an MA HMO, plus other services billed to the petitioner's BCP card. The agency produced billing records showing that the petitioner used her BCP card for medical services totaling \$415.55 in June 2014, \$570.76 in July 2014, and \$545.16 in August 2014. Her husband used his BCP card for medical services totaling \$20.22 in August 2014. *See*, Exhibit 1. Thus, the petitioner's statement that she did not use the medical card in the summer of 2014 was false.

**CONCLUSIONS OF LAW**

1. The petitioner failed to timely report her increased income in April 2013, resulting in the creation of a BCP overpayment that began in May 2013.
2. The petitioner failed to timely report her increased income in May 2014, resulting in the creation of a BCP overpayment that began in June 2014.
3. The county agency correctly determined that the petitioner was overpaid \$1,384 for missing BCP premiums during the June through September 2013 period.
4. The county agency correctly determined that the petitioner was overpaid \$2,831.55 in BCP benefits for the June 1 through August 31, 2014 period.

**THEREFORE, it is****ORDERED**

That the petition is dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

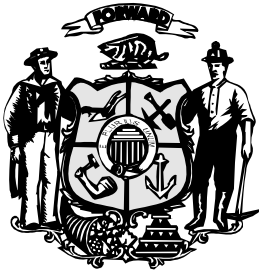
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 26th day of February, 2016

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\sNancy J. Gagnon  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on February 26, 2016.

Marathon County Department of Social Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability